

No. 10345.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

FARM PRODUCTS Co., a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

Statement of Pleadings and Facts Disclosing Basis of Jurisdiction.

Appellant filed its farm debtor petition under Section 75 (a to s) in bankruptcy in the District Court of the United States for the Southern District of California. Petition was filed August 24, 1942.

The United States of America, a secured creditor, appeared specially for the sole purpose of moving to dismiss the proceedings and to vacate stay of proceedings, on the ground:

1. That the farming corporation was not one where 75 per centum of the stock is owned by actual farmers.

2. That the owner of 75 per centum of the stock of said corporation is not an individual who is primarily *bona fide* personally engaged in producing products of the soil, or the principal part of whose income is derived from said farming.

The said court had jurisdiction of said proceedings by virtue of Sections 75R and 75S of the National Bankruptcy Act.

A final order dismissing said proceedings was entered on November 24, 1942.

Notice of appeal was filed by appellant on December 4, 1942.

Order extending time to file appellant's opening brief was made and filed on March 1, 1943.

Appellant relies on the provisions of subdivisions (a) and (b) of Sections 24 and 25(a), Bankruptcy Act, to sustain the jurisdiction of the Circuit Court of Appeals.

The proceedings were completed pursuant to Federal Rules of Civil Procedure, Rule 73 (2), (b), (c) and (g) and Rule 75.

Statement of the Case and Question Involved.

The United States Government, through the Farm Security Administration, sought people to take over and farm lands from which Japanese were being evacuated. Fred Mansur agreed to farm certain of these lands in Los Angeles County, on what is commonly known as Dominguez Hill. The Farm Security Administration supplied operating funds, taking a chattel mortgage as security for such advances.

A corporation formed for this purpose was incorporated April 21, 1942, as Farm Products Co. The stock was authorized to be issued to Fred Mansur, who had agreed to transfer one-half to one Paul Williams, who was the equitable owner of one-half interest in the venture and in the stock. However, before actual issuance of the stock, the Farm Security Administration ordered any further steps by the corporation to be stopped.

The corporation secured leases on approximately 460 acres of land.

The United States of America filed action 2371-RJ to foreclose the chattel mortgage. [Tr. p. 4.]

The Farm Products Co. then filed its petition as a farm debtor in action 41247 In Bankruptcy. [Tr. p. 2.]

The United States of America appeared specially to move to dismiss the proceedings. [Tr. p. 9.]

Hearing was had before Commissioner C. P. Von Herzen on September 17, 1942, and he held that Fred Mansur, the owner of at least a one-half interest in said debtor

corporation, is not a farmer as defined by Section 75R of the Bankruptcy Act.

A review was granted by the District Court, and it sustained the order of the Conciliation Commissioner. [Tr. p. 37.]

Question Involved.

Does a corporation whose only business is farming, and whose stock is owned 50% by an actual farmer, and 50% by a former attorney, who abandoned his law practice for the duration of the war, and enlisted in the army to grow food, qualify as a farming corporation?

Statement of Facts.

Mr. Mansur formed the Farm Products Co. and the stock of the company was authorized to be issued to him; he had agreed to transfer one-half of this stock to Paul Williams, but before this occurred Farm Security Administration requested that no further steps be taken by the corporation. [Tr. p. 12.] Fred Mansur was president of the Farm Products Co. Paul Williams was admittedly a farmer—no question was raised on that score.

Fred Mansur closed his law offices and ENLISTED IN THE ARMY TO RAISE FOOD.

He had previously resided in Los Angeles City; he and his wife personally removed with their household belongings to the farm property; he changed his voting registration to the new precinct. [Tr. p. 13.]

After application had been filed for the issuance of stock of the corporation, the Corporation Commissioner notified Fred Mansur that Paul E. Williams had a previous criminal record and could not be an officer of the company or

have any stock issued to him. Williams then said he was going to take charge of the corporation regardless of the Commissioner and on June 11, 1942, approximately two months after the start of the enterprise, an open break took place between Mansur and Williams.

The Farm Security Administration sided with Williams and by virtue of the provisions of their mortgage ordered Mansur to refrain from any further company activity, and to turn over all administration of the farm to Williams, as their representative.

Mr. Mansur did not resume his law practice. He then returned to the legal office of the company in Los Angeles and continued to busy himself with the affairs of the company in trying to bring about a settlement of the difficulties, but without success and in August Farm Security Administration brought suit to foreclose its mortgage, as previously stated.

At the time of instituting the foreclosure action the farm was planted to cauliflower, cabbage, Kentucky Wonder beans, lima beans, cucumbers, summer squash, and other crops [Tr. p. 3], and the 33 acres of lima beans alone should have produced over \$40,000, or more than the Government loan of \$36,150. [Tr. p. 18.]

Mr. Mansur testified that his duties embraced the formation of the company, negotiating leases, securing a loan from the United States Government, completing banking arrangements, paying labor, buying materials, conferences with Government officials and attending to whatever details required attention. [Tr. pp. 14 and 15.]

By the Farm Plan Mr. Mansur was allowed \$200 per month for living expenses and \$200 per month for operating expenses. [Tr. p. 18.] This was his only income.

Specifications of Errors Relied Upon.

I.

The Conciliation Commissioner erred in making and adopting finding of fact No. VI, as follows:

“The Court finds that the primary and principal occupation of Fred Mansur, President of debtor corporation, and owner of at least a 50 per cent interest in said corporation, is not that of a farmer.”

II.

The Conciliation Commissioner in finding of Fact No. III stated:

“ . . . The Court further finds that the allegation in farm debtor’s petition is not true in that all of the stockholders of the farm products company are persons whose entire time is engaged and whose incomes, and each of them, are more than 75 per centum from their activities and endeavors in producing products of the soil and farming.”

Farm debtor is in full agreement with these facts and contends that its petition *is* therefore true.

III.

The trial court committed reversible error in sustaining the order of the Conciliation Commissioner dismissing the petition of farm debtor and denying said debtor the protection of the Bankruptcy Act.

ARGUMENT.

Point I.

That the trial court erred in adopting the finding of the Conciliation Commissioner as follows:

“The Court finds that the primary and practical occupation of Fred Mansur, President of debtor corporation, and owner of at least a 50 per cent interest in said corporation, is not that of a farmer.”

for the reason that there is no evidence to support said finding.

The position of the Commissioner is reflected in one sentence of his findings, which reads:

“The Court finds that during the period in question that Fred Mansur was at no time engaged in the manual operations of actual farming, that is, planting, raising, caring for and harvesting farm products on the premises belonging to debtor corporation.”

It is admitted that the manual labor was performed by Mexican employees, over 90 being employed at one time, but it is true also that Farm Products Co. was so actually engaged in such manual operations, regardless of whether they were performed by Fred Mansur or Mexican labor.

AUTHORITIES.

In *Shyvers v. Security-First Natl. Bank*, 108 Fed. (2d) 611, a farm located in Santa Barbara County, owned by a person living in London, England, was operated by lease tenants. The Court said (1, 2):

“We agree that the words ‘*bona fide* primarily personally engaged’ do not mean without any assistants.”

It is self-evident that in the case at bar the actual farm work could not have been carried on by any one individual. It is equally clear that a project of this size required supervision.

“Whether a person is a farmer debtor within the meaning of this title depends in each case on its own facts.”

In re Chaney, 39 Fed. Supp. 696.

In *First Natl. Bank v. Beach*, 301 U. S. 439, the Court said:

“The critical fact is that the debtor worked an acreage large enough to count, that he did not work at anything else, and that he gave to this work, whether profitable or unprofitable ‘the major portion of his time.’

* * * * *

“We emphasize the fact afresh that the words of the statute to which meaning is to be given are not phrases of art with a changeless connotation. They have a color and a content that may vary with the setting.”

In the instant case Fred Mansur devoted all his business ability to the activities of Farm Products Co. as long as

he was permitted to do so by the Farm Security Administration, and it seems rather unreasonable for them to put an end to such work and then complain that Fred Mansur was no longer farming.

In *Noble v. Hopewell Natl. Bank*, 37 Am. Bkry. Reports (N. S.) 626, the Court said.

“Assuming, however, that a farmer by straightened circumstances is forced to leave his farm in order to support his family, we do not think that he is a farmer any the less. . . .”

Point II.

The Conciliation Commissioner in finding III, after admitting the corporate entity of Farm Products Co. and its farming operations, uses the rather inept language:

“The Court further finds that the allegation in farm debtor’s petition is not true in that all of the stockholders of the farm products company are persons whose entire time is engaged and whose incomes, and each of them, are more than 75 per centum from their activities and endeavors in producing products of the soil and farming.”

If the facts are as stated by the Court, then it would appear self-evident that the allegation in farm debtor’s petition *is true*.

Point III.

The trial court committed reversible error in denying to farm debtor the rights and benefits of Section 75 of the Bankruptcy Act.

The trial court apparently adopted the view of the Commissioner “that although Fred Mansur lives on the farm

premises, he has at no time taken any personal physical part in the production of agri-products, . . .” In other words, unless a man actually digs in the soil he is not a farmer.

The Commissioner complained that Fred Mansur “contributed neither funds nor farming equipment”. The United States, through the Farm Security Administration, was using every effort to get individuals to take over and farm the land evacuated by the Japanese, and they agreed to finance the operations, hence there was no necessity for contributions by the farmers.

Fred Mansur considered that he was doing his part in closing his offices for the duration and undertaking to carry on this work of raising food for the Army.

Conclusion.

It is apparent from the facts disclosed herein that Fred Mansur was a farmer, or nothing. He had signed an agreement with the United States Government to farm, and continued as long as they permitted him to do so.

The assets of the corporation were more than sufficient to have paid all loans in full, and we submit that the farm debtor was entitled to sufficient time to pay its debts—which would have been in one year.

We respectfully submit that the trial court's order should be reversed.

Respectfully submitted,

FRED MANSUR,

Counsel for Farm Debtor.